



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 25, 1993

Ms. Gretchen Kuehn Bohnert  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

OR93-538

Dear Ms. Bohnert:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20678.

The City of Houston three received an open records requests for certain records that you contend may be withheld from the public pursuant to section 3(a)(3) of the Open Records Act. To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 3(a)(3); the requested records may therefore be withheld.<sup>1</sup>

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records,

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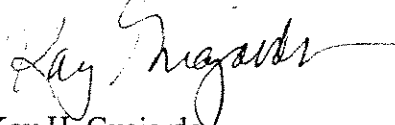
<sup>1</sup>We reach this conclusion even though portions of the requested report prepared by District Chief Matthew Stuckey were quoted in a newspaper. You provided a copy of a memorandum from Fire Chief E. A. Corral to you in which Fire Chief Corral states that the report "was not released in an official capacity by any member representing the Houston Fire Department." The Open Records Act does not preclude a governmental body from invoking its exceptions to protect from further public disclosure information which has been released through no official action and against the wishes and policies of the governmental body. See Open Records Decision No. 387 (1983) at 3; compare Open Records Decision No. 162 (1977) (information voluntarily released to another party is available to everyone).

there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3). We also note that the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

One of the requestors asked for permission to interview the Houston Fire Department personnel who responded to the Coastal Tower fire. Such a request is outside the scope of the Open Records Act since it applies only to tangible information. Attorney General Opinion JM-640 (1987). Nor does the Open Records Act require a governmental body to answer questions. See Open Records Decision No. 555 (1990).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Open Government Section

KHG/rho

Ref.: ID# 20678

Enclosures: Submitted documents

cc: Mr. Richard Longoria  
News Director  
KTRK-TV  
3310 Dissonnet  
Houston, Texas 77005

Mr. Joseph R. Larsen  
Liddell, Sapp, Zivley, Hill  
and LaBoon  
3400 Texas Commerce Tower  
Houston, Texas 77002

Mr. Jeffrey B. Pollicoff  
Pollicoff, Smith & Myres, L. L. P.  
One Greenway Plaza  
Suite 300  
Houston, Texas 77046

(w/o enclosures)